

21 C.J.S. Courts § 306

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Courts

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VIII. Concurrent and Conflicting Jurisdiction

C. Courts of Different States or Countries

§ 306. Stay or dismissal of foreign proceedings—Discretionary nature; factors considered

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  514, 515

The decision to grant a stay or to dismiss a case due to the pendency of a prior parallel proceedings in a different state or foreign country is generally within the sound discretion of the trial court in light of a variety of factors.

The decision to grant a stay or to dismiss a case due to the pendency of a prior parallel proceedings in a different state or foreign country is generally within the sound¹ discretion of the trial court.² In exercising this discretion, a variety of factors may be considered, including avoiding increased costs,³ preventing harassment by repeated suits involving the same subject matter,⁴ avoiding conflicting⁵ or inconsistent⁶ judgments, whether the foreign litigation is at an advanced or preliminary stage,⁷ the likelihood of obtaining complete relief in the foreign jurisdiction,⁸ and the possibility that a judgment entered in the foreign jurisdiction will give rise to collateral estoppel or will render the matter before the court res judicata.⁹

International comity.

In deciding to dismiss a case on the ground of international comity, a court should normally consider whether an adequate forum exists in the objecting nation,¹⁰ whether the foreign court abides by fundamental standards of procedural fairness,¹¹ and whether the defendant sought to be sued in the United States forum is subject to or has consented to the assertion of jurisdiction against it in the foreign forum.¹²

Pendency of subsequent proceedings; stay of prior proceedings.

Where the court in which a suit is first filed is requested to stay the proceedings before it based on a subsequently filed parallel action in another state, the court is to deny the stay and instead uphold the plaintiff's choice of forum except in the rare case where that choice imposes overwhelming hardship on the defendant.¹³

In deciding whether a defendant has met this heavy burden of establishing overwhelming hardship, thereby warranting a stay of the first-filed action, the court will consider the relative ease of access to proof; the availability of compulsory process for witnesses; the possibility of a view of the premises; whether the controversy is dependent upon the application of the law of the state which courts more properly should decide than those of another jurisdiction; the pendency or nonpendency of a similar action or actions in another jurisdiction; and all other practical problems that would make the trial of the case easy, expeditious, and inexpensive.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Under the doctrine of comity, courts have discretion to stay or dismiss a proceeding if an action concerning the same parties and the same subject matter has been commenced in another jurisdiction capable of granting prompt and complete justice. [Restatement \(Second\) of Conflict of Laws § 86](#). [Nijensohn v. Ring, 2022 VT 16, 278 A.3d 1008 \(Vt. 2022\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Bigio v. Coca-Cola Co.*, 239 F.3d 440 (2d Cir. 2000).
Iowa—*First Midwest Corp. v. Corporate Finance Associates*, 663 N.W.2d 888 (Iowa 2003).
- 2 Ariz.—*Astorga v. Wing*, 211 Ariz. 139, 118 P.3d 1103 (Ct. App. Div. 1 2005).
Del.—*United Phosphorus, Ltd. v. Micro-Flo*, 808 A.2d 761 (Del. 2002).
Fla.—*Parker v. Estate of Bealer*, 890 So. 2d 508 (Fla. 4th DCA 2005).
N.J.—*Sensient Colors Inc. v. Allstate Ins. Co.*, 193 N.J. 373, 939 A.2d 767 (2008).
- 3 Ariz.—*Astorga v. Wing*, 211 Ariz. 139, 118 P.3d 1103 (Ct. App. Div. 1 2005).
Idaho—*Klaue v. Hern*, 133 Idaho 437, 988 P.2d 211 (1999).
- 4 Ariz.—*Astorga v. Wing*, 211 Ariz. 139, 118 P.3d 1103 (Ct. App. Div. 1 2005).
- 5 Ariz.—*Astorga v. Wing*, 211 Ariz. 139, 118 P.3d 1103 (Ct. App. Div. 1 2005).
- 6 Idaho—*Klaue v. Hern*, 133 Idaho 437, 988 P.2d 211 (1999).
- 7 Iowa—*First Midwest Corp. v. Corporate Finance Associates*, 663 N.W.2d 888 (Iowa 2003).
- 8 Iowa—*First Midwest Corp. v. Corporate Finance Associates*, 663 N.W.2d 888 (Iowa 2003).
Idaho—*Klaue v. Hern*, 133 Idaho 437, 988 P.2d 211 (1999).
N.J.—*Continental Ins. Co. v. Honeywell Intern., Inc.*, 406 N.J. Super. 156, 967 A.2d 315 (App. Div. 2009).
- 9 Iowa—*First Midwest Corp. v. Corporate Finance Associates*, 663 N.W.2d 888 (Iowa 2003).
- 10 U.S.—*Jota v. Texaco, Inc.*, 157 F.3d 153, 41 Fed. R. Serv. 3d 1282 (2d Cir. 1998).
Ill.—*Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, 359 Ill. Dec. 75, 966 N.E.2d 396 (App. Ct. 1st Dist. 2012).
- 11 U.S.—*International Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324 (Fed. Cir. 2001).
- 12 U.S.—*Jota v. Texaco, Inc.*, 157 F.3d 153, 41 Fed. R. Serv. 3d 1282 (2d Cir. 1998).
- 13 Del.—*United Phosphorus, Ltd. v. Micro-Flo*, 808 A.2d 761 (Del. 2002).
- 14 Del.—*United Phosphorus, Ltd. v. Micro-Flo*, 808 A.2d 761 (Del. 2002).